

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**





76-7498 ~~76 8317~~

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ALVIN TROTMAN and FRANKLIN MITCHELL,

Plaintiffs-Appellees,

-against-

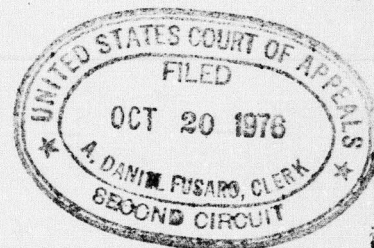
THE PALISADES INTERSTATE PARK COMMISSION,  
MORGAN CLARK, JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION 1-3,

Defendants,

PALISADES INTERSTATE PARK COMMISSION,

Defendant-Appellant.

SUPPLEMENTAL APPENDIX



LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant-Appellant  
The Capitol  
Albany, New York 12224

JAMES S. CARROLL, III, Esq.  
Attorney for Plaintiffs-Appellees  
70 Lafayette Street  
New York, New York 10013

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IN THE  
UNITED STATES COURT OF APPEALS  
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ALVIN TROTMAN and FRANKLIN MITCHELL,

Plaintiffs-Appellees,

-against-

THE PALISADES INTERSTATE PARK COMMISSION,  
MORGAN CLARK, JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION 1-3,

Defendants,

PALISADES INTERSTATE PARK COMMISSION,

Defendant-Appellant.

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SUPPLEMENTAL APPENDIX

PARKS AND RECREATION LAW

ARTICLE 9--PALISADES INTERSTATE PARK  
COMMISSION

§ 9.01 Continuation of commission

The Palisades interstate park commission, as established by compact between the states of New York and New Jersey authorized by chapter one hundred seventy of the laws of nineteen hundred thirty-seven, shall continue in the office [fn.] with the powers, functions

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[fn.] § 1.03 Definitions

Whenever used in this chapter, unless a different meaning clearly appears from the context:

1. "Office" shall mean the state office of parks and recreation.



and duties prescribed in this article. The commission shall continue to have the immediate custody, jurisdiction, management and control of all lands, parks or parkways in this state which it now has under its jurisdiction and control. No New York member of such commission shall serve as such after the thirty-first day of December next succeeding his seventieth birthday.

L. 1972, c. 660, § 1, eff. Sept. 1, 1972.

#### § 9.03 Office

The commission shall have and maintain a suitable office where its maps, plans, documents, records and accounts shall be kept, subject to public inspection at such times and under such reasonable regulations as the commission shall determine.

L. 1972, c. 660, § 1, eff. Sept. 1, 1972.

#### § 9.05 Powers, functions and duties

In addition to the powers, functions and duties conferred upon it by compact, the commission, subject to the approval of the commissioner, shall, within the eighth park region:

1. Acquire and establish parks and recreational facilities and services.

2. Operate and maintain park and recreational facilities and services.

3. Provide for the health, safety and welfare of the public using facilities under its jurisdiction.

4. Appoint such employees, including members of the regional state park police for the eighth region, as may be necessary to carry out its powers, functions and duties.

5. Provide or operate, or provide by lease, concession, exclusive or non-exclusive privilege, or otherwise, for the operation of such facilities, including hotels, restaurants, stands, booths, amusements, docks and any and all means of transportation to, from or in parks and facilities under its jurisdiction, for the use and enjoyment of such parks and facilities by the public and for increasing public access thereto.

6. Lay out, construct and maintain roads, pathways, ways and parkways upon, across and over real property under its jurisdiction, or between and connecting any such roads, pathways, ways and parkways with other public roads or parkways outside such real property, and acquire any real property which is necessary or desirable for such park purposes, pursuant to the provisions of section 9.07.

7. Adopt, amend or rescind such rules, regulations or orders as may be necessary or convenient for the exercise or performance of the functions, powers and duties of the commission, provided, however, no rule, regulation or order affecting traffic or navigation shall be effective unless authorized by the commissioner.



8. Exercise and perform such other functions, powers and duties as may be conferred or imposed by or pursuant to this chapter or other provision of law.

9. Do all other things which are necessary or desirable in carrying out its functions, powers and duties.

L. 1972, c. 660, § 1; amended L. 1972, c. 662, § 2.

§ 9.07 Acquisition of property

The Commission shall have the power to acquire property for park and recreation purposes within the eighth park region, with the approval of the commissioner, in the same manner and to the same extent as provided for acquisitions by the commissioner under sections 3.17 and 3.19 of this chapter. Title to any real property so acquired shall be taken in the name of the commission. Title of, and jurisdiction and control over any real property so acquired shall be vested in the commission in the same manner as for real property presently owned by it, unless otherwise provided by law. Nothing herein contained shall be construed to affect the rights of the state of New York in any property heretofore acquired by the commission.

L. 1972, c. 660, § 1, eff. Sept. 1, 1972.

§ 9.09 Employees

1. The commission shall have the power to take any action necessary for securing and maintaining the benefits of the public retirement systems of this state for its employees in this state

and for such purpose employees of the commission to the extent to which the compensation paid for their services is derived from funds appropriated by this state shall be deemed to be employees of this state and eligible for membership in the appropriate retirement system whether residents of this state or of the state of New Jersey, to the extent otherwise qualified.

2. For the purposes of eligibility for participation in the state health insurance plan under article eleven of the civil service law and for survivor's benefits for active and retired state employees as provided by sections one hundred fifty-four and one hundred fifty-five of the civil service law, employees of the commission, to the extent to which the compensation paid for their services is derived from funds appropriated by this state, shall be deemed to be employees of this state and qualified for such participation and benefits. For the purpose of determining their rights under the workmen's compensation law of this state, employees of the commission employed wholly or partly in this state shall be deemed to be employees of this state provided, however, that the amount of any payment made under such compensation law to an employee of the commission employed only partly in this state shall be only in such proportion as the amount of his salary paid by the state of New York shall bear to his total salary.

3. Employees of the commission whose salary is paid in full from funds appropriated by the state shall be deemed to be



employees of the state in the classified civil service of the state under the provisions of the civil service law. Commission employees not deemed to be state employees hereunder shall be employees of the commission.

L. 1972, c. 660, § 1, eff. Sept. 1, 1972.

#### PALISADES INTERSTATE PARK COMPACT

The present Palisades Interstate Park Commission was created by an interstate compact between New York and New Jersey, signed on June 28, 1937. The compact was authorized by New York Laws 1937, c. 170 and New Jersey Laws 1937, c. 148, N.J.S.A.. 32:17-1 to 32:17-13, and was approved by Congress by Res. Aug. 19, 1937, c. 706, 50 Stat. 719. As it materially affects some of the sections contained in this Part it is set out below in full.

#### COMPACT

Whereas, heretofore the states of New York and New Jersey have cooperated in the establishment and maintenance of an interstate park along the front of the Palisades in said states and in the mountainous lands in Rockland and Orange counties in the state of New York, by respectively enacting legislation creating in each state a body politic by the name and style of "Commissioners of the Palisades Interstate Park", with power to acquire lands for such park, and improve and manage the same, and by respectively appointing in practically all cases, the same persons as members of each of such state bodies politic; and



Whereas, it is confidently believed that the creation, by interstate compact, of a joint corporate municipal instrumentality to hold and manage such interstate park will provide greater flexibility and harmony in the management of the park.

Now, therefore, in consideration of the premises and of the mutual advantages and benefits to accrue to the peoples of the states of New York and New Jersey from this compact and in consideration of the mutual covenants of the parties hereto herein contained, the sovereign state of New York and the sovereign State of New Jersey do hereby agree as follows:

#### Article I.

The park or parks in the state of New York under the jurisdiction, management or control of Commissioners of the Palisades Interstate Park, a body politic created pursuant to chapter one hundred seventy of the laws of nineteen hundred of the state of New York (hereinafter referred to as "New York state board"), and the park or parks in the state of New Jersey now under the jurisdiction, management or control of Commissioners of the Palisades Interstate Park, a body politic created pursuant to chapter eighty-seven of the laws of nineteen hundred of the state of New Jersey (hereinafter referred to as "New Jersey state board," the New York state board and the New Jersey state board being hereinafter referred to collectively as "state boards"), shall continue to exist and shall be maintained in the two states as an interstate park for the use of the public and for the purpose of preserving the scenic beauty of the Palisades and other lands therein. Such park shall be called "Palisades Interstate Park." The parties hereto do hereby agree to and pledge, each to the other, faithful co-operation in the future planning, improvement, development, maintenance, government and management of the park, holding in high trust for the benefit of the public the special blessings and natural advantages thereof.

#### Article II.

There is hereby created a body corporate and politic with the name and style of "Palisades Interstate Park Commission" (for brevity hereinafter referred to as "the commission") which shall be a joint corporate municipal instrumentality of both the state of New York and the state of New Jersey for the purpose of effecting the objects of this compact and which shall be deemed to be performing governmental functions of the two states in the performance of its duties hereunder. The commission shall have power to sue and be sued, to use a common seal and to make and adopt suitable by-laws. The commission shall consist of ten members, five of whom shall be citizens and residents of the state of New York and five of whom shall be citizens and residents of the state of New Jersey. For the purpose of doing business the members of the commission shall constitute a board. The present members of the two state boards shall be the first members of the commission for their respective states for the remainder of the terms for which they were respectively appointed. Each member of the commission shall be a citizen and resident of the state of which his predecessor was a citizen and each member of the commission other than the first mem-

bers shall be appointed by the governor of the state of which his predecessor was a citizen, by and with the approval of the senate of such state. Each member shall take an oath of office to perform faithfully all of the duties of his office according to the best of his ability. Such oath of office may be administered by any officer of the state of which such member is a citizen who is authorized to take oaths of office of any state officer and shall be filed in the office of the secretary of state of such state. The term of office of each member other than said first members shall be five years. Each member shall hold office until his successor shall have been appointed and shall have taken his oath of office, but each term shall be deemed to commence at the end of the preceding five-year term regardless of when the incumbent is appointed or takes the oath of office. If a member shall cease to be a citizen and resident of the state for which he was appointed,

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ed, he shall cease to be a member of the commission. If a member of the commission shall die, resign, be removed, refuse to act, or cease to be a citizen and resident of the state for which he was appointed, the vacancy so created shall be filled, for the unexpired term only, by the appointment of a citizen and resident of the state of which such member was a citizen by the governor thereof, by and with the approval of the senate of such state. Each member of the commission may be removed from office for neglect of duty or misconduct in office by the governor of the state of which such member is a citizen after giving such member a copy of the charges against him and an opportunity of being publicly heard in person or by counsel or both in his own defense, upon not less than ten days' notice. No member of the commission shall receive any compensation for his services as a member, but each member shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office. The commission shall annually choose a president, a vice-president, a treasurer and a secretary from among its members and may also appoint such other officers as it may deem necessary or appropriate to carry out the purposes of this compact.

#### Article III.

There are hereby transferred to the commission all of the functions, jurisdiction, rights, powers and duties of the respective state boards, as now prescribed by the laws of the respective states, and the same shall hereafter be exercised and performed by the commission, subject to such modifications thereof as are contained in this compact. Either the state of New York or the state of New Jersey may by law applicable to parks or park commissions generally within such state, or by law specifically applicable to the commission or to any of the parks within such state under its jurisdiction, and without the concurrence of the other state, withdraw, modify, alter or amend any of the functions, jurisdiction, rights, powers and duties transferred to the commis-

sion by this article or confer additional functions, jurisdiction, rights, powers and duties on the commission, but such action by one state shall be effective only within the territorial limits of such state. The commission shall also have such additional functions, jurisdiction, rights, powers and duties as may be conferred upon it by both states.

#### Article IV.

1. All legal and equitable title to or in any property, tangible or intangible and whether real, personal or mixed, used or held as a part of, in connection with, or for the purposes of the park or parks now under the jurisdiction, management or control of the respective state boards, or connected with the maintenance or control thereof, in so far as the same shall have heretofore been vested in either of such state boards, is hereby transferred to and vested in the commission, subject to such liens, encumbrances, permits, life rights and other contracts relating thereto or in respect thereof as may lawfully exist. All such legal and equitable title shall, upon the taking effect of this compact, forthwith and thereafter reside in the commission without further act or deed or transfer.

2. The commission shall succeed and shall be and hereby is substituted for each of the state boards in so far as either of them has any obligation or liability to any person, firm or corporation, has undertaken or commenced any proceeding or other business, is a party to any action, suit or proceeding (the substitution of the commission for either of the state boards in any action, suit or proceeding to be deemed to be by operation thereof without motion or order) or has issued or promulgated any orders, rules or regulations, and also in so far as, consistent with the other provisions and the purposes of this compact, the commission should be regarded as succeeding and as substituted for either of the state boards in any other respect in order that the purposes of this compact may be accomplished. The balance of all appropriations heretofore made by either



## PALISADES INTERSTATE PARK

state and remaining to the credit of either of the state boards, to which either state board is entitled, or in the future would become entitled if its existence continued, shall be deemed to be appropriations to the commission herein created, and the commission shall, upon the taking effect of this compact, succeed to all the rights to any such appropriations theretofore made with the same force and effect as if the commission had originally been specifically named in the respective appropriation acts instead of the respective state boards for which such appropriations were made.

3. All lands the title to which is hereby transferred to or shall hereafter be owned by the commission shall be and continue under the jurisdiction of the commission and shall be used only for public park purposes and none of said lands or any part thereof shall be sold, exchanged or conveyed except with the consent of both states by specific enactments; provided, however, that the commission shall have power to grant easements, licenses, permits and other rights over any lands held by it in either state when in the opinion of the commission the same will not interfere with the use and enjoyment of the park by the public.

4. Each state may by legislation make rules and regulations for the use and government, including regulation of traffic, of such portions of the park as lie within the boundaries of the state, and such parts of any state, county or other public highways as lie within the limits of such portions of the park, and all lands, parks and parkways in the state under the jurisdiction of the commission, prescribe the penalty or penalties for violation of any such rules or regulations, prescribe the procedure for enforcement of any such penalty or penalties and provide the court or courts in which any such enforcement is to be sought.

### Article V.

1. All money, securities and other property, real and personal, heretofore received by either of the state boards or hereafter received by the commission by way of gift, bequest or

devise, may be retained by the commission and, except in so far as the purpose or manner of using the same is otherwise specifically designated or restricted by the terms of any such gift, bequest or devise, may be used in the commission's discretion in either state for any park purpose; and the commission may likewise retain and use all revenue and income arising solely from such money, securities and other property so received by way of gift, bequest or devise or from facilities or operations financed solely by funds so received. In the case of revenue and income arising partly from specific property received by way of gift, bequest or devise or from specific facilities or operations financed partly by funds so received, the commission may likewise retain and use such proportion of such revenue and income as the amount of gifts, bequests or devises, or the proceeds thereof, invested in each such property, facility or operation, bears to the total amount invested therein. The legislature of either state may from time to time by law specifically made applicable to the commission prescribe other terms and conditions upon which or purposes for which any gifts, bequests or devises thereafter made of money, securities or other property may be accepted for use in such state or used in such state or prescribe a different manner of administering gifts, bequests or devises thereafter made in such state and the disposition of all revenues or income arising therefrom.

2. Either state may from time to time by law require the commission to render to any designated official or official body of such state such reports and such estimates of revenues and expenditures as may be specified in such law.

### Article VI.

The commission shall not pledge the credit of either state except by and with the authority of the legislature thereof.

### Article VII.

Neither the state of New York nor the state of New Jersey shall be liable



for any torts of the commission, its members, officers or employees, except as provided by the laws of such state, but each member, officer and employee of the commission shall, with respect to any tort committed by him in the exercise of his duties or in the course of his employment as such member, officer or employee, be deemed to be an officer or employee of the state where such tort was committed, and any liability arising from such tort shall be governed by the laws of such state.

#### Article VIII.

This compact may be amended from time to time by the concurrent action of the two states who are parties hereto.

In witness whereof, the sovereign states of New York and New Jersey, respectively, have caused this compact to be signed and sealed in triplicate by their respective commissioners thereunto duly authorized this 28th day of June, nineteen hundred thirty-seven.

#### Historical Note

Section derived from L.1900, c. 170, § 1, and L.1901, c. 504, § 1; repealed L.1928, c. 242, § 50.

### CIVIL PRACTICE LAW AND RULES

1-25

#### LIMITATIONS OF TIME

§ 215

**§ 215. Actions to be commenced within one year: against sheriff, coroner or constable; for escape of prisoner; for assault, battery, false imprisonment, malicious prosecution, libel or slander; for violation of right of privacy; for penalty given to informer; on arbitration award.**

The following actions shall be commenced within one year:

1. an action against a sheriff, coroner or constable, upon a liability incurred by him by doing an act in his official capacity or by omission of an official duty, except the non-payment of money collected upon an execution;
2. an action against an officer for the escape of a prisoner arrested or imprisoned by virtue of a civil mandate;
3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights law;
4. an action to enforce a penalty or forfeiture created by statute and given wholly or partly to any person who will prosecute; if the action is not commenced within the year by a private person, it may be commenced on behalf of the state, within three years after the commission of the offense, by the attorney-general or the district attorney of the county where the offense was committed; and
5. an action upon an arbitration award.
6. An action to recover any overcharge of interest or to enforce a penalty for such overcharge.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs.

: 75 Civ. 4377

-against-

THE PALISADES INTERSTATE PARK COMMISSION;  
MORGAN CLARK; JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION 1-3,

Defendants.

-----X  
MEMORANDUM OF LAW

JAMES S. CARROLL, III, ESQ.  
Attorney for Plaintiffs  
CARROLL, McCLARY & REID  
70 Lafayette Street  
Second Floor  
New York, New York 10013  
Tele. No. (212) 964-9452



The Court went on to state at 237:

"Ex Parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he:

'comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.'"

Named defendants in this action fall squarely within the ambit of the rule set forth above and are subject to suit in the Federal Courts for the violation of plaintiffs' civil rights as alleged under 42 U.S.C. 1983. The fact that named defendants are police officers does not privilege them to raise the defense of executive immunity. Monroe v. Pape, 365 U.S. 167 (1961). Furthermore, the main purpose of enacting section 1983 was to insure there existed an impartial forum between citizens and the state. That forum is the Federal Court system, as guardian of the peoples' federal rights from the unlawful intrusion upon their rights under color of state law, whether that action emanate from legislative, executive or judicial authority. The Eleventh Amendment ought not and cannot act as a bar to remedy of violations of constitutional rights guaranteed under the remainder of the Constitution. Mitchum v. Foster, 407 U.S. 225; Sterling v. Constatin, 287 U.S. 378.

The due process clause of the Fourteenth Amendment compels a remedy for its violation. That remedy is in damages to the wronged party and thereby a restriction on any broadened interpretation of the Eleventh Amendment to exclude its applicability when a constitutional violation is asserted. Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388.

The test for whether a defendant can be afforded immunity under the Eleventh Amendment was discussed in a recent case, Byram River v. Village of Port Chester, New York, 394 F. Supp. 618 (1975). The Court in Byram River concluded that where a defendant can be deemed the alter ego of the state such that any judgement would ultimately reach the state as real party in interest, sovereign immunity under the eleventh amendment acts as an absolute bar, and strips a court of jurisdiction to render any award. Byram, supra 394 F. Supp. at 624.

Byram River, supra, however, was not an action brought under 42 U.S.C. 1983. As the Court in Byram states when referring to Edelman v. Jordan, supra:

"...in deciding whether a State bar waived its constitutional protection under the eleventh amendment, a court must look for express language or other form of overwhelming intent on the part of Congress to effect such a result." Byram River, supra 394 F. Supp. at 626.

As stated above, the intent of Congress when inacting section 1983 was to interpose the federal courts between states and people as guardian



of the people against unconstitutional action under color of state law. Mitchum v. Foster, 407 U.S. 225; Edelman v. Jordan, 415 U.S. 651 (1974); Scheuer v. Rhodes, 416 U.S. 232 (1974); Monroe v. Pape, 365 U.S. 167 (1961); Sterling v. Constatin, 287 U.S. 378. Clearly the defendants in this action fall within the class not afforded immunity protection based upon the above cases and proper interpretation of 42 U.S.C. 1983. The court must therefore exercise jurisdiction. Further, plaintiffs will be barred from any remedy should this action be dismissed.

POINT II

MONETARY DAMAGES ARE AVAILABLE  
IN ACTIONS AGAINST STATE OFFICIALS  
UNDER 42 U.S.C. 1983.

The question of damages available in a 1983 action is well discussed in a series of recent cases. The pivotal question is whether injunctive relief is the only remedy available to a plaintiff who alleges a wrongful act by a state officer acting under color of state law. In Edelman v. Jordan, 415 U.S. 651 (1974), the Court held in a 5 - 4 decision that immunity under the Eleventh Amendment extended to all actions which in effect sought monetary damages which were traceable ultimately to the public treasury.

In a later decision, Scheuer v. Rhodes, supra, the Court conceded that "(i)n some situations a damage remedy can be as effective a redress for infringement of a constitutional right as injunctive relief might be in another". Scheuer, supra, 416 U.S. 232 at 238. The

plaintiffs in this action would receive no relief through injunction and stand firmly within the range of those who must be compensated by a remedy in damages.

The Court went on to say that where the complaint alleges facts which illustrate plaintiffs are attempting to impose individual liability upon named defendants based upon a deprivation of constitutional rights under color of state law, such claims are not barred by the Eleventh Amendment. Further, District Courts should not dismiss such complaints for lack of jurisdiction. Scheuer, supra, 416 U.S. 232 at 238.

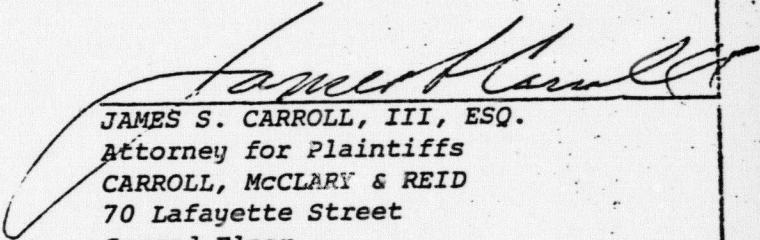
Where the action is commenced under U.S.C. 1983, an action for damages is recoverable against state officials. Edelman, supra (Douglas' dissent), and the mere fact that the action seeks damages as opposed to equitable relief does not merit a distinction based upon the type of defendant. Sterling v. Constatin, 287 U.S. 378, 403; Stefanilli v. Minard, 342 U.S. 117, 122.



C O N C L U S I O N  
= = = = =

In conclusion, defendants' motion to dismiss should be denied and the Court should accept jurisdiction.

Respectfully Submitted,



JAMES S. CARROLL, III, ESQ.  
Attorney for Plaintiffs  
CARROLL, McCLARY & REID  
70 Lafayette Street  
Second Floor  
New York, New York 10013  
Tele. No. (212) 64-9452

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ALVIN TROTMAN, et al,  
Pltffs-Appellees,  
against

THE PALISADES INTERSTATE PARK COMM.,  
et al, Defendants,

PALISADES INTERSTATE PARK COMMISSION,  
Defendant-Appellant.

STATE OF NEW YORK)  
COUNTY OF ALBANY ) ss.:  
CITY OF ALBANY )

RoseMarie LaSala, being duly sworn, says:  
I am over eighteen years of age and a Senior Stenographer  
in the office of the Attorney General of the State of New York, attorney  
for the Defendant-Appellant herein.

On the 8th day of October 1976 I served  
the annexed Supplemental Appendix upon the  
attorney named below, by depositing two copies thereof,  
properly enclosed in a sealed, postpaid wrapper, in the letter box  
of the Capitol Station post office in the City of Albany, New York,  
a depository under the exclusive care and custody of the United States  
Post Office Department, directed to the said attorney at the  
address within the State respectively theretofore designated by  
him for that purpose as follows: JAMES S. CARROLL, III, ESQ.  
70 LAFAYETTE STREET  
NEW YORK, NEW YORK 10013

Sworn to before me this

8th day of October 1976

Ralph D. Canale

RALPH D. CANALE  
Notary Public, State of New York  
No. 460119  
Qualified in Albany County  
Commission Expires March 30, 1977

Rose Marie LaSala